

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CRIMINAL NO. 19-00129-DKW
)
 Plaintiff,) Honolulu, Hawaii
)
 vs.) October 7, 2019
)
 SUNG YANG,) WAIVER OF INDICTMENT AND
) ARRAIGNMENT AND PLEA TO THE
 Defendant.) INFORMATION
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DERRICK K. WATSON,
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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For the Defendant: THOMAS M. OTAKE, ESQ.
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United States District Court
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

Proceedings recorded by machine shorthand, transcript produced with computer-aided transcription (CAT).

1 October 7, 2019 10:38 a.m.

10:38AM 2 THE CLERK: Calling Criminal Number 19-00129-DKW,
10:38AM 3 United States of America versus Defendant (01) Sung S. Yang.

10:38AM 4 This case has been called for initial appearance,
10:38AM 5 waiver of indictment, and arraignment and plea to the
10:38AM 6 information.

10:38AM 7 Counsel, please make your appearances for the record.

10:38AM 8 MR. NAMMAR: Good morning, Your Honor. Michael Nammar
10:38AM 9 and Niall O'Donnell for the United States. Niall O'Donnell is
10:38AM 10 an attorney with the Department of Justice. Also with me is
10:38AM 11 Laura Salazar from the FBI.

10:38AM 12 THE COURT: All right. Good morning to all three of
10:38AM 13 you.

10:38AM 14 MR. OTAKE: Good morning, Your Honor. Thomas Otake
10:38AM 15 who is present with Sung Yang who is present in court.

10:38AM 16 THE COURT: Good morning to both of you as well.

10:38AM 17 Mr. Otake, I gather you are retained counsel?

10:38AM 18 MR. OTAKE: I am.

10:38AM 19 THE COURT: We are here this morning because the
10:38AM 20 defendant, Mr. Yang, wishes to do a couple of things: First,
10:38AM 21 to waive indictment and to proceed via the information that the
10:38AM 22 United States attorney has filed in this matter and also to
10:38AM 23 plead guilty to the September 12, 2019 information. And he
10:39AM 24 wishes to do so pursuant to a plea agreement with the United
10:39AM 25 States.

10:39AM 1 Mr. Yang, before accepting either your waiver or your
10:39AM 2 plea, there are a few questions that I need to ask you this
10:39AM 3 morning to ensure that your decisions are both knowing and
10:39AM 4 voluntary. I don't think any of the questions I'm going to ask
10:39AM 5 you are particularly ambiguous or complex in any way, shape, or
10:39AM 6 form; but nonetheless, if there are questions that I ask that
10:39AM 7 you do not understand, please let me know and I'll do my best
10:39AM 8 to provide clarification. Okay?

10:39AM 9 THE DEFENDANT: Okay.

10:39AM 10 THE COURT: All right. Please swear the defendant.

10:39AM 11 (The defendant was sworn to answer truthfully.)

10:39AM 12 THE COURT: Please understand, sir, that you have now
10:39AM 13 taken an oath this morning to answer the Court's questions
10:39AM 14 truthfully, and if you do anything other than that, you could
10:39AM 15 be subjecting yourself to additional charges. Do you
10:39AM 16 understand that, sir?

10:39AM 17 THE DEFENDANT: Yes.

10:39AM 18 THE COURT: Please state your full name.

10:39AM 19 THE DEFENDANT: Sung S. Yang.

10:39AM 20 THE COURT: How old are you?

10:39AM 21 THE DEFENDANT: I'm 44 years old.

10:40AM 22 THE COURT: What's the highest level of education that
10:40AM 23 you have achieved?

10:40AM 24 THE DEFENDANT: Doctor of Medicine.

10:40AM 25 THE COURT: Who is your most recent employer?

10:40AM 1 THE DEFENDANT: Self.

10:40AM 2 THE COURT: And you understand, speak, and I assume
10:40AM 3 you write English all just fine; is that true?

10:40AM 4 THE DEFENDANT: Yes.

10:40AM 5 THE COURT: Have you taken any drugs, legal or
10:40AM 6 illegal, within the past 48 hours?

10:40AM 7 THE DEFENDANT: No.

10:40AM 8 THE COURT: Have you consumed any alcohol within the
10:40AM 9 past 24 hours?

10:40AM 10 THE DEFENDANT: No.

10:40AM 11 THE COURT: Are you sober then and thinking clearly
10:40AM 12 this morning?

10:40AM 13 THE DEFENDANT: Yes.

10:40AM 14 THE COURT: What is your understanding, sir, of the
10:40AM 15 purpose of this morning's hearing?

10:40AM 16 THE DEFENDANT: My understanding is that I'll be
10:40AM 17 agreeing to a plea agreement of the charges that are put
10:40AM 18 against me.

10:40AM 19 THE COURT: And you intend to plead guilty to the
10:40AM 20 crime that has been charged?

10:40AM 21 THE DEFENDANT: Yes.

10:40AM 22 THE COURT: All right. And have you had enough time,
10:40AM 23 sir, to discuss that decision whether or not to plead guilty as
10:40AM 24 well as this case generally with Mr. Otake?

10:40AM 25 THE DEFENDANT: Yes.

10:40AM 1 THE COURT: Are you satisfied with his representation
10:40AM 2 of you thus far in this case?

10:40AM 3 THE DEFENDANT: Yes.

10:40AM 4 THE COURT: Mr. Otake, do you have any reason to doubt
10:41AM 5 Mr. Yang's capacity or competence to either enter a knowing and
10:41AM 6 informed plea or to waive indictment?

10:41AM 7 MR. OTAKE: No, Your Honor.

10:41AM 8 THE COURT: Mr. Yang, have you received a copy of the
10:41AM 9 government's information in this case that was filed, I
10:41AM 10 believe, on September 12th?

10:41AM 11 THE DEFENDANT: Yes.

10:41AM 12 THE COURT: Do you wish to have that information read
10:41AM 13 to you in its entirety?

10:41AM 14 THE DEFENDANT: No.

10:41AM 15 THE COURT: In sum and substance, the information sets
10:41AM 16 forth a single count alleging a violation of Title 18 of the
10:41AM 17 United States Code, Section 1347. And in summary it alleges
10:41AM 18 that between September 2011 and September 2018, continuing
10:41AM 19 through that approximate seven-year time period, you were a
10:41AM 20 physician who operated several outpatient clinics here on the
10:41AM 21 island of Oahu and, in doing so, submitted false and fraudulent
10:42AM 22 claims to Medicare, Medicaid, TRICARE and HMSA for services
10:42AM 23 that were allegedly rendered to patients and beneficiaries
10:42AM 24 insured by these Health Care Benefits Programs.

10:42AM 25 More specifically, the information charges that you

10:42AM 1 billed these programs for healthcare services that were either
10:42AM 2 not in fact provided or not medically necessary in the amount
10:42AM 3 of approximately \$977,000.80 for which you received payment of
10:42AM 4 \$253,419.11. Once again, that would be in violation of Title
10:42AM 5 18, United States Code, Section 1347.

10:42AM 6 Have you discussed these charges and allegations with
10:42AM 7 counsel?

10:42AM 8 THE DEFENDANT: Yes, Your Honor.

10:42AM 9 THE COURT: Are you confident, sir, that you
10:42AM 10 understand the nature of the charges that have been brought
10:42AM 11 against you?

10:42AM 12 THE DEFENDANT: Yes.

10:42AM 13 THE COURT: Do you have any questions with regard to
10:43AM 14 these charges?

10:43AM 15 THE DEFENDANT: No, sir.

10:43AM 16 THE COURT: You do have a constitutional right to be
10:43AM 17 charged by grand jury indictment, but you can waive that right
10:43AM 18 and consent to proceed by an information filed by the United
10:43AM 19 States attorney.

10:43AM 20 THE DEFENDANT: I will waive.

10:43AM 21 THE COURT: I'm going to go over a little bit about
10:43AM 22 that process before we get to that point, okay? Do you
10:43AM 23 understand that?

10:43AM 24 THE DEFENDANT: Yes, sir.

10:43AM 25 THE COURT: Unless you -- excuse me, unless you were

10:43AM 1 to waive indictment, do you understand, sir, that you cannot be
10:43AM 2 charged with this felony offense unless the grand jury were to
10:43AM 3 return an indictment finding that there is probable cause to
10:43AM 4 believe that a federal crime has been committed and that you
10:43AM 5 committed it?

10:43AM 6 THE DEFENDANT: Yes.

10:43AM 7 THE COURT: I know Mr. Otake has gone over this, and I
10:43AM 8 apologize for the redundancy of the procedure, but please
10:43AM 9 understand, sir, that a grand jury here is a body of at least
10:43AM 10 16 but not more than 23 impartial citizens from our local
10:43AM 11 community. If you choose not to waive indictment, the United
10:43AM 12 States could present evidence to that grand jury, and the grand
10:44AM 13 jury would then vote in private once again to determine if
10:44AM 14 there is probable cause to believe that a federal crime has
10:44AM 15 been committed and that you committed it. Are you tracking
10:44AM 16 with me so far?

10:44AM 17 THE DEFENDANT: Yes.

10:44AM 18 THE COURT: If at least 12 of those grand jurors vote
10:44AM 19 to so find, they would return what's known as an indictment
10:44AM 20 against you.

10:44AM 21 On the other hand, if at least 12 of those grand
10:44AM 22 jurors do not so find and vote accordingly, they would not
10:44AM 23 return an indictment against you. In other words, the grand
10:44AM 24 jury, based on the information presented to it by the United
10:44AM 25 States attorneys office or the Department of Justice, may or

10:44AM 1 may not indict you.

10:44AM 2 On the other hand, if you were to waive indictment by
10:44AM 3 the grand jury, the information that was filed by the United
10:44AM 4 States attorney in this matter on September 12, 2019 will act
10:44AM 5 exactly as if an indictment had issued. Do you understand
10:44AM 6 that?

10:44AM 7 THE DEFENDANT: Yes.

10:44AM 8 MR. OTAKE: Sorry, Your Honor, one second.

10:44AM 9 THE COURT: Do you understand this process, sir?

10:45AM 10 THE DEFENDANT: Yes.

10:45AM 11 THE COURT: Do you have any questions about either the
10:45AM 12 process or these rights that you have?

10:45AM 13 THE DEFENDANT: No.

10:45AM 14 THE COURT: Have you discussed this process with your
10:45AM 15 counsel?

10:45AM 16 THE DEFENDANT: Yes, Your Honor.

10:45AM 17 THE COURT: Understanding and knowing this process
10:45AM 18 then, having had the opportunity to discuss it with counsel, do
10:45AM 19 you still wish to waive indictment?

10:45AM 20 THE DEFENDANT: Yes.

10:45AM 21 THE COURT: Now, to accomplish that waiver, you've
10:45AM 22 signed -- at least it appears that you've signed a waiver of
10:45AM 23 indictment form, that's the AO455 standard form. Is that your
10:45AM 24 signature, sir, that appears on this document along
10:45AM 25 Mr. Otake's, dated today's date, October 7, 2019?

10:45AM 1 THE DEFENDANT: Yes.

10:45AM 2 THE COURT: The Court will go ahead and countersign
10:45AM 3 this form, and we will make it part of the Court's record and
10:45AM 4 docket later on today.

10:45AM 5 The Court finds that Mr. Yang knowingly and
10:45AM 6 voluntarily waives indictment and consents to proceed by
10:45AM 7 information.

10:45AM 8 Now, Mr. Yang, I do understand that you intend to
10:46AM 9 plead guilty to the single count that is set forth in the
10:46AM 10 information; is that correct?

10:46AM 11 THE DEFENDANT: Yes.

10:46AM 12 THE COURT: Has anyone threatened, forced, or coerced
10:46AM 13 you, sir, into pleading guilty?

10:46AM 14 THE DEFENDANT: No.

10:46AM 15 THE COURT: Has anyone threatened, forced, or coerced,
10:46AM 16 to your knowledge, anyone close to you, meaning a close friend
10:46AM 17 or a relative, in order to get to you plead guilty?

10:46AM 18 THE DEFENDANT: No.

10:46AM 19 THE COURT: Has anyone made any promises or assurances
10:46AM 20 to you in order to get you to plead guilty other than the
10:46AM 21 promises that the government has made in its plea agreement
10:46AM 22 with you?

10:46AM 23 THE DEFENDANT: No.

10:46AM 24 THE COURT: Are you pleading guilty this morning
10:46AM 25 because you are guilty of the conduct alleged in Count 1?

10:46AM 1 THE DEFENDANT: Yes.

10:46AM 2 THE COURT: Mr. Nammar, what are the potential
10:46AM 3 penalties that Mr. Yang faces then for pleading guilty to Count
10:46AM 4 1?

10:46AM 5 MR. NAMMAR: Yes, Your Honor, they start on page three
10:46AM 6 of the plea agreement. They are up to ten years incarceration,
10:46AM 7 a fine of up \$250,000 or twice the value of the gross gain or
10:46AM 8 loss from the offense; a term of supervised release of up to
10:47AM 9 three years; forfeiture of any property which constitutes or is
10:47AM 10 derived from proceeds traceable to the offense to which Dr.
10:47AM 11 Yang is pleading guilty to; restitution to the persons and
10:47AM 12 entities victimized by the defendant's offense; and a mandatory
10:47AM 13 \$100 special assessment.

10:47AM 14 THE COURT: Mr. Nammar, do you agree?

10:47AM 15 MR. OTAKE: Yes, Your Honor.

10:47AM 16 THE COURT: Mr. Yang, do you understand, sir, the
10:47AM 17 penalties that you face for pleading guilty to this count?

10:47AM 18 THE DEFENDANT: Yes, Your Honor.

10:47AM 19 THE COURT: My understanding is that as part of the
10:47AM 20 penalties that just have just been set forth by AUSA Nammar,
10:47AM 21 you do agree to the imposition of a forfeiture money judgment
10:47AM 22 in favor of the United States and in the amount of \$253,419.11
10:47AM 23 as more fully described in the forfeiture allegations of the
10:47AM 24 information. Is that your understanding as well?

10:47AM 25 THE DEFENDANT: Yes, Your Honor.

10:47AM 1 THE COURT: You've entered into a plea agreement with
10:48AM 2 the United States, correct?

10:48AM 3 THE DEFENDANT: Yes.

10:48AM 4 THE COURT: And have you read that document, the plea
10:48AM 5 agreement, in full?

10:48AM 6 THE DEFENDANT: Yes.

10:48AM 7 THE COURT: Have you had an opportunity to discuss it
10:48AM 8 with Mr. Otake?

10:48AM 9 THE DEFENDANT: Yes.

10:48AM 10 THE COURT: Are you confident, sir, that you
10:48AM 11 understand each and every one of the terms of your plea
10:48AM 12 agreement with the United States?

10:48AM 13 THE DEFENDANT: Yes.

10:48AM 14 THE COURT: Mr. Otake, are you satisfied that Mr. Yang
10:48AM 15 understands the terms of his plea agreement?

10:48AM 16 MR. OTAKE: Yes, Your Honor.

10:48AM 17 THE COURT: Now, I have what appears to be the
10:48AM 18 original of that agreement in front of me.

10:48AM 19 Mr. Yang, is that your signature, sir, that appears on
10:48AM 20 the final page of the document, that is page 18, dated today's
10:48AM 21 date of October 7, 2019?

10:48AM 22 THE DEFENDANT: Yes, Your Honor.

10:48AM 23 THE COURT: Does this document reflect the entire
10:48AM 24 agreement that you have with the United States?

10:48AM 25 THE DEFENDANT: Yes.

10:48AM 1 THE COURT: Another way of saying it somewhat
10:48AM 2 similarly is, did the government make any verbal or oral
10:48AM 3 promises to you that they did not put into the written plea
10:48AM 4 agreement?

10:48AM 5 THE DEFENDANT: No.

10:48AM 6 THE COURT: Do you understand, sir, that the Court is
10:48AM 7 not required to accept your plea agreement and that I could
10:48AM 8 reject it after I consider a presentence investigation and
10:49AM 9 investigation report which will both be completed after the
10:49AM 10 conclusion of this morning's hearing?

10:49AM 11 THE DEFENDANT: Yes.

10:49AM 12 THE COURT: Do you also understand that any
10:49AM 13 stipulations in your plea agreement are stipulations between
10:49AM 14 you and the Department of Justice and U.S. Attorney's office
10:49AM 15 and that the Court specifically is not bound by those
10:49AM 16 stipulations?

10:49AM 17 THE DEFENDANT: Yes.

10:49AM 18 THE COURT: Mr. Nammar, would you then set forth the
10:49AM 19 essential terms of the government's plea agreement with
10:49AM 20 Mr. Yang, including any appellate waiver provisions?

10:49AM 21 MR. NAMMAR: Yes, Your Honor. In paragraph four of
10:49AM 22 the agreement, the defendant agrees to waive indictment and
10:49AM 23 plead guilty to a one-count information charging healthcare
10:49AM 24 fraud. The defendant also waives any right to assert a statute
10:49AM 25 of limitations defense.

10:49AM 1 In paragraph seven, the defendant acknowledges the
10:49AM 2 maximum penalties for the crime to which he is pleading guilty,
10:49AM 3 which the Court has already gone over with the defendant.

10:49AM 4 In paragraph eight, the defendant admits to certain
10:49AM 5 facts that relate to the charge contained in the information,
10:50AM 6 namely that he submitted false claims to Health Care Benefit
10:50AM 7 Programs using billing codes for physician consulting services
10:50AM 8 that were in fact not provided and were also not medically
10:50AM 9 necessary.

10:50AM 10 In paragraph nine, there are several stipulations that
10:50AM 11 the parties have entered into. First, the parties agree that
10:50AM 12 the base offense level under the applicable guideline range is
10:50AM 13 6.

10:50AM 14 Second, the parties agree that the intended loss in
10:50AM 15 this case is more than \$250,000 but less than 1.5 million.

10:50AM 16 Third, there are two separate agreements regarding
10:50AM 17 acceptance of responsibility. The parties agree that the
10:50AM 18 defendant, if eligible, shall receive a one-level reduction for
10:50AM 19 acceptance of responsibility pursuant to Section 3E1.1(a) of
10:50AM 20 the guidelines.

10:50AM 21 In paragraph ten, the parties acknowledge that these
10:51AM 22 stipulations, the stipulations contained in paragraph nine, are
10:51AM 23 not binding on the Court.

10:51AM 24 As more thoroughly discussed in paragraph 12, the
10:51AM 25 defendant is waiving his right to appeal his conviction and the

10:51AM 1 sentence imposed, except that he may appeal his sentence if the
10:51AM 2 Court imposes a sentence that is greater than the specified
10:51AM 3 guideline range determined by the Court.

10:51AM 4 The defendant is also waiving his right to challenge
10:51AM 5 his sentence in any collateral attack; however, he retains the
10:51AM 6 ability to collaterally attack a sentence that is greater than
10:51AM 7 the specified guideline range. The defendant also retains the
10:51AM 8 right to make a claim of ineffective assistance of counsel in a
10:51AM 9 collateral attack.

10:51AM 10 In paragraph 14 of the plea agreement, the defendant
10:51AM 11 makes several agreements regarding forfeiture. As explained in
10:51AM 12 paragraph 14A specifically, the defendant agrees that he will
10:51AM 13 consent to the entry of a forfeiture money judgment in the
10:51AM 14 amount of \$253,419.11.

10:52AM 15 Those are the essential terms of the plea agreement.

10:52AM 16 THE COURT: Mr. Otake, do you agree that AUSA Nammar
10:52AM 17 has set forth the essential terms of the government's plea
10:52AM 18 agreement with Mr. Yang?

10:52AM 19 MR. OTAKE: Yes, Your Honor.

10:52AM 20 THE COURT: Mr. Yang, the government's counsel just
10:52AM 21 went over what it considers to be the important and essential
10:52AM 22 terms of your plea agreement with the United States.

10:52AM 23 There's one provision I want to call out to your
10:52AM 24 attention in particular. It is what is sometimes referred to
10:52AM 25 as the appellate waiver provision. In your particular plea

10:52AM 1 agreement, that clause appears at paragraph 12. What that
10:52AM 2 particular paragraph, in sum and substance, says is that by
10:52AM 3 virtue of entering into this plea agreement with the United
10:52AM 4 States, you are agreeing to give up or waive your right to
10:52AM 5 challenge the Court's final judgment and sentence in this case.
10:52AM 6 In virtually all circumstances, all legally waivable claims is
10:52AM 7 specifically what that paragraph says. And paragraph four says
10:52AM 8 that all the legally waivable claims specifically includes any
10:53AM 9 statute of limitations defense that you might otherwise have.

10:53AM 10 Do you understand that?

10:53AM 11 THE DEFENDANT: Yes.

10:53AM 12 THE COURT: Now, there are exceptions. There are in
10:53AM 13 fact two small exceptions -- limited exceptions to this very
10:53AM 14 broad waiver. And I want to go over those with you right now
10:53AM 15 too.

10:53AM 16 Those two limited waivers are the following: If the
10:53AM 17 Court were to sentence you to something above what the
10:53AM 18 applicable federal sentencing guidelines call for, this
10:53AM 19 agreement says that you retain the right to challenge only that
10:53AM 20 portion of the Court's sentence above the applicable sentencing
10:53AM 21 guideline range, and you may do so either by direct appeal or
10:53AM 22 by collateral attack.

10:53AM 23 Secondly, you mentioned a few minutes ago that you've
10:53AM 24 been satisfied with Mr. Otake's representation of you thus far
10:53AM 25 in this case. If that were to change, if you believe you were

10:53AM 1 rendered the ineffective assistance of counsel, paragraph 12
10:53AM 2 says you retain your right to challenge this Court's judgment
10:53AM 3 and sentence on that basis.

10:53AM 4 Except in those two limited circumstances, you are
10:53AM 5 agreeing and acknowledging that all of your other rights to
10:53AM 6 challenge this Court's final judgment and sentence on direct
10:54AM 7 appeal or by collateral attack are being given up or waived.
10:54AM 8 Do you understand that?

10:54AM 9 THE DEFENDANT: Yes, Your Honor.

10:54AM 10 THE COURT: Now, this agreement that you are entering
10:54AM 11 into with the government also requires you to give up or waive
10:54AM 12 some important trial and trial related rights. Those are
10:54AM 13 largely described at paragraph 17 of your plea agreement, and
10:54AM 14 I'm going to go over those with you now.

10:54AM 15 The first of which is, sir, do you understand that
10:54AM 16 under the constitution and laws of the United States, you have
10:54AM 17 the right not to plead guilty and to proceed to a trial,
10:54AM 18 including a trial by jury, on the charges that have been
10:54AM 19 brought against you?

10:54AM 20 THE DEFENDANT: Yes.

10:54AM 21 THE COURT: Do you understand, sir, that if you were
10:54AM 22 to proceed to trial, you would be presumed innocent, which
10:54AM 23 means that the government would have the burden of proving your
10:54AM 24 guilt to a jury beyond a reasonable doubt, and that at no time
10:54AM 25 would you have the burden of proving you are not guilty?

10:54AM 1 THE DEFENDANT: Yes.

10:54AM 2 THE COURT: Do you understand, sir, that in order to
10:54AM 3 be found guilty at a trial, the jury of 12 persons from this
10:54AM 4 local community would have to find your guilt beyond a
10:54AM 5 reasonable doubt and they would also have to do so unanimously?

10:55AM 6 THE DEFENDANT: Yes.

10:55AM 7 THE COURT: Do you understand that at all stages of
10:55AM 8 the prosecution, which includes trial, you have the right to
10:55AM 9 the assistance of counsel, as you do here this morning, and if
10:55AM 10 at any point in time you could not afford counsel, one would be
10:55AM 11 appointed for you by the Court at no cost to you?

10:55AM 12 THE DEFENDANT: Yes.

10:55AM 13 THE COURT: Do you understand, sir, that at any trial
10:55AM 14 you would have the right to see and to hear all of the
10:55AM 15 government's evidence and witnesses and to have those witnesses
10:55AM 16 questioned by your own attorney?

10:55AM 17 THE DEFENDANT: Yes.

10:55AM 18 THE COURT: Do you also understand that at any trial
10:55AM 19 you could object to any of the evidence offered by the United
10:55AM 20 States, and you could present evidence of your own in your case
10:55AM 21 in chief, including through witness testimony that is compelled
10:55AM 22 through the Court's subpoena power if that were necessary?

10:55AM 23 THE DEFENDANT: Yes.

10:55AM 24 THE COURT: Do you also understand, Mr. Yang, that at
10:55AM 25 any trial you could offer testimony from yourself on your own

10:55AM 1 behalf, if you chose to do that; but if you chose not to

10:55AM 2 testify, no inference or suggestion of your guilt could be

10:56AM 3 drawn by jury by the fact that you chose not to testify?

10:56AM 4 THE DEFENDANT: Yes.

10:56AM 5 THE COURT: Do you understand, sir, that by entering a

10:56AM 6 plea of guilty this morning and if I were to accept that plea,

10:56AM 7 there will be no trial and you will have given up each of these

10:56AM 8 trial related lights that I've just mentioned?

10:56AM 9 THE DEFENDANT: Yes, Your Honor.

10:56AM 10 THE COURT: Do you also understand, sir, that in order

10:56AM 11 to proceed with your plea, you will also need to give up or

10:56AM 12 waive your right not to incriminate yourself? And the reason

10:56AM 13 for that is I'm about to ask you a few questions about what you

10:56AM 14 did that makes you guilty of Count 1 of the information, and

10:56AM 15 those questions will need to be answered. Do you understand

10:56AM 16 that?

10:56AM 17 THE DEFENDANT: Yes, I do.

10:56AM 18 THE COURT: Do you have any questions, sir, regarding

10:56AM 19 these rights that I've just outlined?

10:56AM 20 THE DEFENDANT: No, Your Honor.

10:56AM 21 THE COURT: Knowing these rights, do you still wish to

10:56AM 22 proceed with your plea?

10:56AM 23 THE DEFENDANT: Yes.

10:56AM 24 THE COURT: You are a United States citizen, correct?

10:56AM 25 THE DEFENDANT: Yes.

10:56AM 1 THE COURT: As a United States citizen, you need to
10:56AM 2 understand that the charge that has been brought against you
10:56AM 3 and that you are prepared to plead guilty to, set forth in the
10:56AM 4 information, is considered a felony offense. If you proceed
10:57AM 5 with your plea and that plea is accepted and you are adjudged
10:57AM 6 guilty of that offense, that adjudication by the Court could
10:57AM 7 deprive you of some valuable civil rights. And those civil
10:57AM 8 rights include the right to vote, the right to hold public
10:57AM 9 office, the right to sit on a jury, as well as the right to
10:57AM 10 possess or bear a firearm. Do you understand that?

10:57AM 11 THE DEFENDANT: Yes.

10:57AM 12 THE COURT: With respect to sentencing, United States
10:57AM 13 law establishes detailed sentencing guidelines that apply to
10:57AM 14 those who are convicted of, which includes those who plead
10:57AM 15 guilty to federal crimes. The sentencing judge, in this case
10:57AM 16 most likely myself, must consider those sentencing guidelines
10:57AM 17 and additionally must consider some statutory sentencing
10:57AM 18 factors that are described at 18 United States Code, Section
10:57AM 19 3553(a), what we sometimes refer to as the 3553(a) factors.

10:57AM 20 Although the sentencing judge must consider these
10:57AM 21 sentencing guidelines, do you understand, sir, that the
10:57AM 22 guidelines are what the name might perhaps imply to you,
10:57AM 23 meaning that they are advisory on this Court only? Do you
10:58AM 24 understand that?

10:58AM 25 THE DEFENDANT: Yes, Your Honor.

10:58AM 1 THE COURT: Have you discussed with Mr. Otake how the
10:58AM 2 sentencing guidelines might apply to your case?

10:58AM 3 THE DEFENDANT: Yes.

10:58AM 4 THE COURT: I use the term "might" with purpose, and I
10:58AM 5 use it because, as Mr. Otake has probably mentioned to you, the
10:58AM 6 Court cannot, as I sit here today, with precision determine how
10:58AM 7 the sentencing guidelines might apply to your case. I will not
10:58AM 8 be able to do that until after the presentence investigation
10:58AM 9 and investigation report that I mentioned a few minutes ago are
10:58AM 10 prepared and after both Mr. Otake as well as Mr. Nammar have an
10:58AM 11 opportunity to provide the Court with any comments on or
10:58AM 12 objections to the contents of that report.

10:58AM 13 THE DEFENDANT: Yes.

10:58AM 14 THE COURT: Do you understand, sir, that after the
10:58AM 15 Court determines how the guidelines apply to your case and
10:58AM 16 applies the statutory 3553(a) factors I mentioned a few minutes
10:58AM 17 ago, the Court could impose a sentence that is either more or
10:58AM 18 less severe than what the sentencing guidelines call for?

10:58AM 19 THE DEFENDANT: Yes.

10:59AM 20 THE COURT: Do you understand that if a sentence is
10:59AM 21 imposed that is more severe than what you expect or more severe
10:59AM 22 than what the guidelines call for, you will nonetheless be
10:59AM 23 bound by both your plea as well as your plea agreement and will
10:59AM 24 have no right to withdraw from either on that basis?

10:59AM 25 THE DEFENDANT: Yes.

10:59AM 1 THE COURT: Do you understand, Mr. Yang, that despite
10:59AM 2 any discussions you may have had with Mr. Otake, with
10:59AM 3 Mr. Nammar, or with anyone else regarding the type or duration
10:59AM 4 of the sentence you're likely to receive, that I am not bound
10:59AM 5 by any discussions that you may have had with them, nor am I
10:59AM 6 bound by any recommendations regarding sentencing that really
10:59AM 7 either side or anyone might wish to provide to me? Do you
10:59AM 8 understand that as well?

10:59AM 9 THE DEFENDANT: Yes, Your Honor.

10:59AM 10 THE COURT: Has anyone made any promises to you
10:59AM 11 regarding what your sentence will be?

10:59AM 12 THE DEFENDANT: No.

10:59AM 13 THE COURT: Do you understand that at the time of
10:59AM 14 sentencing there is no limitation on the information that the
10:59AM 15 Court can consider regarding your background, your character,
10:59AM 16 and your conduct except that the information the Court uses
11:00AM 17 must be sufficiently reliable?

11:00AM 18 THE DEFENDANT: Yes.

11:00AM 19 THE COURT: Do you understand that if a term of
11:00AM 20 imprisonment is imposed as part of your sentence, a term of
11:00AM 21 supervised release is very likely to follow, and if you were to
11:00AM 22 violate any of the conditions of supervised release, additional
11:00AM 23 prison time could be imposed?

11:00AM 24 THE DEFENDANT: Yes.

11:00AM 25 THE COURT: Do you also understand, sir, that in the

11:00AM 1 federal system parole has been abolished; and what that means
11:00AM 2 from a practical standpoint is, if a term of imprisonment is
11:00AM 3 imposed as part of your sentence, you will not be released
11:00AM 4 early on parole?

11:00AM 5 THE DEFENDANT: Yes.

11:00AM 6 THE COURT: Do you also understand, sir, that as part
11:00AM 7 of any final judgment in this case and as part of any sentence,
11:00AM 8 the Court could order you to pay a fine as well as a special
11:00AM 9 assessment? Do you understand that?

11:00AM 10 THE DEFENDANT: Yes.

11:00AM 11 THE COURT: And the Court could also order you to
11:00AM 12 forfeit certain property to the United States, including the
11:00AM 13 property described in the forfeiture allegations of the
11:00AM 14 information.

11:00AM 15 THE DEFENDANT: Yes.

11:00AM 16 THE COURT: All right, we have reached the point in
11:00AM 17 this morning's proceedings that I mentioned a few minutes ago
11:00AM 18 when we talked about the need to give up or waive your right
11:01AM 19 not to incriminate yourself. I need to be sure that you in
11:01AM 20 fact committed the crime that you have been charged with in
11:01AM 21 Count 1 of the information, and the first step in that process
11:01AM 22 is to ask AUSA Nammar to set forth the elements of that count.

11:01AM 23 MR. NAMMAR: Yes, Your Honor. There are four
11:01AM 24 elements.

11:01AM 25 First, that the defendant knowingly executed or

11:01AM 1 attempted to execute a scheme or artifice to defraud a health
11:01AM 2 care benefit program and to obtain money or property owned by
11:01AM 3 or under the custody or control of a health care benefit
11:01AM 4 program by means of false or fraudulent pretenses,
11:01AM 5 representations, or promises.

11:01AM 6 Second, the false or fraudulent pretenses,
11:01AM 7 representations, or promises related to material fact.

11:01AM 8 Third, the defendant acted willfully and with intent
11:01AM 9 to defraud.

11:01AM 10 And, fourth, the defendant did so in connection with
11:01AM 11 the delivery of or payment for health care benefits, items, or
11:01AM 12 services.

11:01AM 13 THE COURT: Mr. Otake, do you have any disagreement
11:02AM 14 with AUSA Nammar's description of the elements of Count 1?

11:02AM 15 MR. OTAKE: No, Your Honor.

11:02AM 16 THE COURT: Okay, then I'll turn back to the
11:02AM 17 government's attorney to set forth the evidence that the
11:02AM 18 government would offer in this case if it were to proceed to
11:02AM 19 trial.

11:02AM 20 MR. NAMMAR: Your Honor, if this case went to trial,
11:02AM 21 the government would prove beyond a reasonable doubt that the
11:02AM 22 defendant was a physician who owned and operated an outpatient
11:02AM 23 physician clinic with multiple locations on the island of Oahu.
11:02AM 24 Medicare, Medicaid, which is also known as Hawaii QUEST,
11:02AM 25 TRICARE, and the Hawaii Medical Service Association, or HMSA,

11:02AM 1 were Health Care Benefit Programs as defined by Title 18,
11:02AM 2 United States Code, Section 24(b).

11:02AM 3 Beneficiaries and patients insured by the Health Care
11:02AM 4 Benefit Programs would visit the Yang Clinic for the purpose of
11:02AM 5 receiving physician and outpatient services and would be seen
11:02AM 6 by the defendant. The defendant then submitted and caused to
11:02AM 7 be submitted false and fraudulent claims to the Health Care
11:02AM 8 Benefit Programs using billing codes for physician consulting
11:03AM 9 service known as "G codes" for services that were in fact not
11:03AM 10 provided and were also not medically necessary.

11:03AM 11 Between approximately September 2011 and approximately
11:03AM 12 September 2018, as a result of the false and fraudulent claims
11:03AM 13 submitted or cause to be submitted by the defendant to the
11:03AM 14 Health Care Benefit Programs for "G code" services that were in
11:03AM 15 fact not provided and were also not medically necessary,
11:03AM 16 Medicare was billed approximately \$192,334 and paid
11:03AM 17 approximately \$46,697.70; Medicaid was billed approximately
11:03AM 18 \$594,884.80 and paid approximately \$157,783.04; TRICARE was
11:03AM 19 billed approximately \$69,458.00 and paid approximately
11:03AM 20 \$7,603.85; and HMSA was billed approximately \$120,324.00 and
11:04AM 21 paid approximately \$41,334.52.

11:04AM 22 In total, the Health Care Benefit Programs were billed
11:04AM 23 approximately \$977,000.80 in false and fraudulent claims and
11:04AM 24 paid approximately \$253,419.11.

11:04AM 25 THE COURT: Mr. Yang, do you agree, sir, that what the

11:04AM 1 government said you did is true?

11:04AM 2 THE DEFENDANT: Yes.

11:04AM 3 THE COURT: And do you understand, sir, the evidence
11:04AM 4 that the government would offer if this case were to proceed to
11:04AM 5 trial?

11:04AM 6 THE DEFENDANT: Yes.

11:04AM 7 THE COURT: In your own words, sir, describe what you
11:04AM 8 did that makes you guilty of Count 1.

11:04AM 9 THE DEFENDANT: Between 2011 and 2018, I knowingly
11:04AM 10 submitted false claims for reimbursement to the Health Care
11:04AM 11 Benefit Programs related to "G code" services that either were
11:04AM 12 not provided or not medically necessary. This led to the
11:05AM 13 Health Care Benefit Programs paying out approximately \$250,000
11:05AM 14 on these false claims over that seven-year period.

11:05AM 15 THE COURT: And this had to do with the delivery of
11:05AM 16 medical services or health care services to patients here in
11:05AM 17 the district of Hawaii; is that true?

11:05AM 18 THE DEFENDANT: Yes.

11:05AM 19 THE COURT: During that same seven-year -- roughly
11:05AM 20 seven-year time frame?

11:05AM 21 THE DEFENDANT: Yes, sir.

11:05AM 22 THE COURT: And to be more precise, you mentioned
11:05AM 23 250,000 -- the information and your plea agreement both
11:05AM 24 identified the sum of \$253,419.11 paid out by these four Health
11:05AM 25 Care Benefits Programs identified once again in both locations

11:05AM 1 as a result of the false or fraudulent claims that you
11:05AM 2 submitted. Is that, to be a little bit more accurate, correct,
11:05AM 3 as far as you understand it, sir?

11:05AM 4 THE DEFENDANT: Yes.

11:05AM 5 THE COURT: Are both counsel satisfied that a factual
11:05AM 6 basis for Dr. Yang's plea of guilty to Count 1 has been
11:06AM 7 established?

11:06AM 8 MR. NAMMAR: Yes, Your Honor.

11:06AM 9 MR. OTAKE: Yes, Your Honor.

11:06AM 10 THE COURT: Mr. Yang, I'll then turn to you then, sir,
11:06AM 11 as to Count 1 of the information. How do you plead: guilty or
11:06AM 12 not guilty?

11:06AM 13 THE DEFENDANT: Guilty.

11:06AM 14 THE COURT: The Court finds that the defendant,
11:06AM 15 Mr. Yang, understands the nature of this morning's proceedings
11:06AM 16 and is competent to waive indictment and proceed by information
11:06AM 17 as well as to enter a knowing and informed plea.

11:06AM 18 The Court further finds that Mr. Yang has voluntarily
11:06AM 19 waived indictment and consented to proceed by information. The
11:06AM 20 Court has entered on the docket the waiver of indictment form
11:06AM 21 that Mr. Yang and counsel have signed as has the Court.

11:06AM 22 The Court further finds that Mr. Yang has entered a
11:06AM 23 knowing, informed, and voluntary plea of guilty this morning,
11:06AM 24 and he has done so without coercion, force, or threat relevant
11:06AM 25 to Count 1 of the information.

11:06AM 1 The Court finds that Mr. Yang's plea of guilty is
11:06AM 2 supported by an independent bases in fact containing each of
11:06AM 3 the essential elements of Count 1, and that Mr. Yang
11:06AM 4 understands both the trial and civil rights that he would have
11:06AM 5 in the absence of pleading, but nonetheless knowingly and
11:07AM 6 voluntarily elects to waive those rights. The Court finds that
11:07AM 7 in pleading guilty, the defendant understands the factors that
11:07AM 8 the Court will consider at the time of sentencing and that the
11:07AM 9 defendant consents to the entry of a forfeiture money judgment
11:07AM 10 in the amount of \$253,419.11 in favor of the United States, in
11:07AM 11 accordance with the plea agreement that Mr. Yang has signed
11:07AM 12 with the United States.

11:07AM 13 Mr. Yang, as you've acknowledged that you are in fact
11:07AM 14 guilty, I accept your guilty plea and adjudge you guilty as
11:07AM 15 charged of Count 1 of the information.

11:07AM 16 The Court orders the plea agreement in this case to be
11:07AM 17 filed but reserves a determination of whether to accept it
11:07AM 18 until after a presentence investigation and investigation
11:07AM 19 report have both been completed.

11:07AM 20 May we get a sentencing date please?

11:07AM 21 THE CLERK: January 22, 2020 at 9:30.

11:07AM 22 THE COURT: Is that date and time acceptable with both
11:07AM 23 counsel?

11:07AM 24 MR. NAMMAR: Yes, Your Honor.

11:07AM 25 MR. OTAKE: Yes, Your Honor.

11:07AM 1 THE COURT: All right, the defendant is under pretrial
11:07AM 2 release. I have read the pretrial services report that was
11:08AM 3 submitted to me earlier this morning. Is there any issues with
11:08AM 4 regard to allowing the defendant to remain out on bail pursuant
11:08AM 5 to the conditions outlined in the pretrial service report,
11:08AM 6 Mr. Nammar?

11:08AM 7 MR. NAMMAR: There is not, Your Honor. Normally in
11:08AM 8 these cases we see a condition that the defendant would be
11:08AM 9 precluded from billing any of the entities listed in the
11:08AM 10 information, which is TRICARE, Medicare, Medicaid, HMSA. He is
11:08AM 11 likely to be revoked by those entities, but sometimes there is
11:08AM 12 a lag in doing that; so we would ask for that condition.

11:08AM 13 THE COURT: All right, is there any objection to that,
11:08AM 14 Mr. Otake?

11:08AM 15 MR. OTAKE: That's something that he has a civil
11:08AM 16 attorney that's helping him with and so these programs are
11:08AM 17 going to do what they are going to do. And I would just ask
11:08AM 18 that we leave it to the programs to do what they are going to
11:08AM 19 do and not make it a term of his pretrial release.

11:08AM 20 THE COURT: So you're not representing him on the
11:08AM 21 civil side?

11:08AM 22 MR. OTAKE: No, I'm not. Mr. George Hetherington is.

11:09AM 23 THE COURT: Well, the Court does find that the
11:09AM 24 defendant ought to be allowed to remain out on pretrial release
11:09AM 25 pending sentencing pursuant to a number of conditions that are

11:09AM 1 identified in the pretrial services report. Those include
11:09AM 2 being allowed out on unsecured bond in the amount of \$25,000.
11:09AM 3 In addition, the defendant must comply with the number
11:09AM 4 of additional conditions; they include complying with the
11:09AM 5 pretrial services supervision and abiding by all the conditions
11:09AM 6 of release as directed by pretrial services.
11:09AM 7 The defendant must inform pretrial services within
11:09AM 8 24 hours of any contact with law enforcement, including but not
11:09AM 9 limited to any arrest, questioning, other than with respect to
11:09AM 10 the instant offense, as well as any traffic stop.
11:09AM 11 The defendant must maintain or actively seek
11:10AM 12 employment as directed by pretrial.
11:10AM 13 He additionally must surrender by October 11th of
11:10AM 14 2019, which is later this week, any passport and any and all
11:10AM 15 travel documents to the U.S. Pretrial Services offices, he may
11:10AM 16 not obtain or apply for any new passport. Of course, if not
11:10AM 17 convicted, well, I guess that's kind of water under the bridge
11:10AM 18 at this point. Travel is restricted to the State of Hawaii.
11:10AM 19 The defendant may not change residence without the
11:10AM 20 approval -- prior approval of pretrial services.
11:10AM 21 He must provide pretrial services with any and all
11:10AM 22 requested financial information to include employment and all
11:10AM 23 sources of income, bank accounts, assets and liabilities, as
11:10AM 24 well as investments. He is also required to sign and execute
11:10AM 25 an authorization to release financial information as requested

11:10AM 1 by pretrial services. Pretrial services is authorized and the
11:11AM 2 defendant acknowledges to run credit reports on a random and
11:11AM 3 as-needed basis during the term of his supervision to insure
11:11AM 4 compliance with his pretrial release conditions. He is also
11:11AM 5 required -- well, this is a redundant condition; is that right?
11:11AM 6 The authorization mentioned in paragraph 80, is that the same
11:11AM 7 one that is contemplated by 8N?
11:11AM 8 MS. PATRICK: Your Honor, 80 is specifically for
11:11AM 9 credit reports.
11:11AM 10 THE COURT: Well --
11:12AM 11 MS. PATRICK: Your Honor, 80 could fall under the 8N,
11:12AM 12 but 8N is a little bit broader. There may be other releases.
11:12AM 13 80 is specifically for the credit report.
11:12AM 14 THE COURT: Well, there is no objection to the release
11:12AM 15 of his credit report information.
11:12AM 16 MR. OTAKE: No objection.
11:12AM 17 THE COURT: All right. So he is required then, in
11:12AM 18 paragraph 80, to authorize release of financial information as
11:12AM 19 requested by pretrial services. It seems to me that it's
11:12AM 20 redundant of paragraph 8N. As just mentioned, 8N is broader,
11:12AM 21 it applies to all financial information. So if it applies to
11:12AM 22 all financial information, I don't see how it wouldn't apply to
11:12AM 23 any credit report information that it comes into the custody of
11:12AM 24 pretrial services.
11:12AM 25 In conjunction with the Court's Ho'okele program, the

11:12AM 1 Court does authorize the defendant to participate in voluntary
11:12AM 2 stress and anxiety counseling as arranged by pretrial services.
11:12AM 3 In addition to these special conditions, the defendant may not
11:12AM 4 commit any offense in violation of federal, state, or local law
11:13AM 5 while on release. He shall appear at all proceedings as
11:13AM 6 required including the one just scheduled on January 22nd of
11:13AM 7 2020 at 9:30 in this court and shall surrender for service of
11:13AM 8 any sentence as imposed as directed.

11:13AM 9 And the defendant must also cooperate in the
11:13AM 10 collection of DNA if authorized by 42 United States Code,
11:13AM 11 Section 14135(a).

11:13AM 12 With regard to the requested prohibition as far as
11:13AM 13 billing to the three Health Care Benefits Programs that are
11:13AM 14 identified in the information, the Court declines to do so at
11:13AM 15 this time.

11:13AM 16 Anything else that we need to take up? Did I miss
11:13AM 17 anything?

11:13AM 18 MR. NAMMAR: No, Your Honor.

11:13AM 19 MR. OTAKE: No, Your Honor. Thank you.

11:13AM 20 THE COURT: We will see you back here in January of
11:13AM 21 next year for sentencing.

11:13AM 22 MR. OTAKE: Thank you, Your Honor.

11:13AM 23 (Proceedings were concluded at 11:13 a.m.)

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1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, April 15, 2022.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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